Supreme Court, U.S.
FILED

011784 JUN 4 2002

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

THEOPHILUS GREEN, et al.,

Petitioners,

v.

MARY ANN BENDEN, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

THEOPHILUS GREEN, PSY.D.
225 West Washington Street
Chicago, Illinois 60606
(312) 419-7199

Pro Se

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

60295

Questions Presented

Whether a court's broad discretionary powers can suspend default judgement, following notice and a hearing in compliance with the Federal Rules of Civil Procedure, including Rule 11, when both the district and appellate courts have evidence the default is part of an intentional strategy to circumvent due process to avoid addressing plaintiff claims, in violation of the plaintiff's 14th Amendment civil rights under the U.S. Constitution.

Whether the current Illinois Governor's Executive Order 2000-4, issued to address violations that circumvent protections provided black and minority males under Furman v. Georgia, (1972), imposes a greater responsibility on the state, district and appellate courts to insure due process and procedural integrity, when evidence of misstatements and procedural violations in the state, district and federal courts obstruct due process.

Whether the district court's discretionary powers can grant defendants' rights at trial, or the appellate court's discretionary powers can grant defendants' appeal rights, when the defendants are subject to a pending default motion in compliance with FRCP.

Whether the appellate court's discretionary powers can grant the defendant new defenses, not raised at trial, in their ruling or denial for rehearing.

Rule 24.1(b) Statement

Pursuant to Rule 24.1(b) of the Rules of this court, petitioner hereby provides the following names of parties to this proceeding whose names do not appear in the caption:

Plaintiffs

Associated Psychological Services,
Psychological Solutions, P.C.
Related Clients and Staff

Defendants

Michael Palermo, Individually,
Director, Illinois Department of Professional Regulation
Health Care Service Corporation d/b/a Blue Cross Blue Shield

Rule 29.6 Statement

Pursuant to Rule 29.6, petitioners state that they have no parent companies or non-wholly owned subsidiaries.

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Petition for a Writ of Certiorari

Opinions Below

The opinion of the 7th district court of appeals is reported at 281 F. 3rd 661 7th Cir, 2002. The judgments of the District Court is unreported. (Appendix B1-B4)

Jurisdiction

The court of appeals' judgement was entered on February 21, 2002 . A timely petition for rehearing was denied on March 20 , 2002 and amended March 21, 2002. The jurisdiction of this court is invoked under 28 U.S.C. chapter 1254(1).

Constitution and Statutory Provisions Involved

The Supremacy clause of the constitution provides in relevant part: "The laws of the United States*** shall be the Supreme law of the Land*** any Thing in the Constitution or Laws of any state to the contrary not withstanding". U.S. Const. Art. VI cl.2.

The Federal Rules of Civil Procedure "govern the procedure in the United States district courts in all suits of a civil nature...." They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." Paragraph 1 Rule 1.

Statement

The essential facts giving rise to Dr. Theophilus Green's petition are all undisputed.

In this civil rights conspiracy action, the district court ordered the defendants to answer the Second Amended

complaint filed April 26, 2000, which included the addition of new plaintiffs, Associated Psychological Services, Psychological Solutions, and Related Clients and Staff, within 20 days. Mary Anne Benden and Michael Palermo are Illinois prosecutors whom plaintiff Green, a black psychologist, alleged knowingly unlawfully sanctioned his psychology license in their position as prosecutors for the Illinois Department of Professional Regulation.

Health Care Service Corporation d/b/a Blue Cross Blue Shield withheld insurance reimbursements based on the removal of Dr. Green's license by the Illinois Department of Professional Regulation. The Wisconsin Department of Professional Regulation remain a party to this case at the district level. The defendants failed to file an answer by May 16, 2000, instead relying on variously styled "Memorandum." Dr. Green filed a motion for default and default judgement (docket summary, entry 78, dkt. 87) and sanctions, (dkt. 89), for all plaintiffs.

By operation of law under the FRCP, all plaintiffs in the caption of the final judgement, are entitled to their relief as sought, without the requirement of appeal.

The Illinois defendants sought sovereign immunity under the 11th Amendment, and the Younger Abstention in their defenses to the Complaint and the Amended Complaint. HCSC alleged there was no evidence of a conspiracy in which they were participants in its answer to the Amended Complaint. Neither of the defendants filed motions to have their previous answers under the Complaint and the Amended Complaint stand for the moving Second Amended Complaint.

Six months after the complaint was filed, in February, 2000, the Governor of Illinois issued Executive Order 2000-4, suspending implementation of the death penalty, thereby overriding written state law and policy. This order was issued to address abuse of police, prosecutor and trial court discretionary powers throughout the state that knowingly unlawfully circumvented constitutional protections provided

under *Furman v. Georgia,* 408-U.S. 238, (1972). At the time of the Governor's executive order, Illinois had exonerated more (13), prisoners, predominately black and minority men, than it had executed (12), since the resumption of the death penalty in 1977, following the implementation of DNA evidence.

A temporary injunction hearing was held, later termed an evidentiary hearing in the final order, but no hearing was ever held to address the application of the Younger Abstention or the elements of conspiracy.

Dr. Green's complaint stated the offenses alleged occurred over 12 years in the past, before he became a covered party of the state psychology licensing act, and in any event, outside of the Statute of Limitations for any violations. The issue, in contest, was his verification of another psychologist's training. There was no contest by either defendant that the document in question were never used for any official decisions.

In his complaint, Dr. Green provided evidence that another psychologist, who was white, signed a similar document, but was not disciplined. That psychologist's (Reginald Orsolini) documentation was also not used for any official decision. Dr. Green provided affidavits that the prosecutors used their discretionary powers to bring false charges to force his perjured testimony against another psychologist. When he did not acquiesce, they used their discretionary powers to create a violation that did not exist. The prosecutors later persuaded the administrative law judge to use his discretionary powers to create new charges for discipline after the hearing had closed. The prosecutors and IDPR then claimed immunity for their actions under qualified and sovereign protections as state officials.

In this appeal, Dr. Green further alleges the district court used its discretionary power to rule Dr. Green failed to make a race based claim that was clearly stated in Count Two in the Second Amended Complaint when it dismissed his complaint. The district court further erred when it used its discretionary power to deny a motion for a special master to clarify the

professional psychology standards at issue, and allowed the defendants to hide their official mischief behind defenses of qualified and sovereign immunity on the state level and due process violations in the federal courts.

In dismissing the claims, using his discretionary powers, the trial court allowed the defendants the further protection of his own judicial immunity by ruling "with prejudicious", and thus denied the plaintiffs due process. Dr. Green was unlawfully sanctioned for actions not included in the original complaint, but which were entirely legal by the standards of his profession. To bring the charges, the Illinois prosecutors used their discretionary powers to go to the refuse can to retrieve discarded documents for another psychologist, and an application that was denied.

The determination of his offense, Dr. Green alleged, resulted because actions common and accepted in the field of psychology, would be violations in the field of law, and the prosecutors were ignorant of the law they sought to enforce. He alleged that the prosecutors began their conspiracy when they procured an old complaint number to justify the charges. Thus, the same IDPR complaint number is on record for two separate and distinct offenses, 12 years apart, and this violation was known to all supervisors and directors in the IDPR.

The old charge number, 93-5867, resulted from a retaliatory action brought against Dr. Green by a parent whose child was removed from the home in 1993. Because of a mandated reporter state law to report child abuse, Dr. Green was required to report the parent for child abuse to the Illinois Department of Children and Family Services. The new charge alleged violations in 1986. Dr. Green was first licensed in Illinois in 1990. Dr. Green alleged he was disciplined, because of a mandated reporter law that brought him to the attention of the law, then denied immunity protections required by the same law. He further alleges that it is part of an ongoing pattern and practice in Illinois to deny black and minority men of every station of life, their 14th Amendment rights.

The remedy the Illinois defendants sought for his offenses were 24 hours of continuing education units for a minimum of 8 years, or 192 hours c.e.u., each hour, considered a class credit hour. It was the equivalent of a separate bachelor's, masters and doctorate degree. The discipline served to arbitrarily and unconstitutionally remove not only his license, but all evidence of post secondary education. *(Yick Wo v. Hopkins,* 118 U.S. 356 (1886). Illinois does not mandate c.e.u. credits as a condition of licensure. The Illinois defendants knew that their actions would also compromise his contract rights as an insurance provider and notified HCSC of their actions.

The administrative law ruling also included mandatory psychotherapy reviewed by state officials, in violation of his confidentiality and privacy rights, for a minium of eight years. The therapy resulted from the administrative law judge's diagnosis of Dr. Green's objections during trial. Dr. Green's district court pleadings alleged the discipline constituted cruel and unusual punishment, in violation of the Eighth Amendment, as it would result in "reeducation" and "brain-washing."

HCSC knew, and filed pleadings in the case that it had in its possession documentation, that the allegations against Dr. Green even if true, were protected by mandated reporter immunity tied to the reporting of child abuse. Further, HCSC maintained contracts with Dr. Green and the other plaintiffs which required licensure by the "Illinois Department of Registration and Education." The agency authority which HCSC used to terminated the plaintiff's rights to contract benefits was the "Illinois Department of Professional Regulation."

Dr. Green alleged HCSC had a contractual obligation to inform IDPR of his immunity and their state department contradictions under his contract with him and their contract with the other included plaintiffs who were denied benefits as policy holders. HCSC further had a responsibility to inform both he and his clients of the federal subpoena, as implied responsibilities under his reimbursement contract with HCSC,

before they could deny contract benefits. His complaint alleged that HCSC knowingly withheld that information from IDPR as well as their intention to deny Dr. Green's patients their insurance reimbursements to him. These acts and non-acts were in furtherance of the conspiracy to deny Dr. Green the benefits of his education and for their personal gain to justify their breach of his reimbursement contract. Under 42 U.S.C. 1983, it is not a requirement that conspirators communicate with each other, but that they be united behind a common purpose. The purpose, under which the Illinois defendants and HCSC united was to retaliate against Dr. Green for refusing cooperate with their perjury schemes in another investigation and entitle HCSC to withhold mental health benefits to a substantial number of its insureds.

Dr. Green sought sanctions against the defendants and their counsel for their actions, but the district court used its discretionary powers to deny them, without a hearing, in violation of FRCP Rule 11. Associated Psychological Solutions, and Psychological Solutions, P.C. and Related Clients and staff joined the suit to seek damages for HCSC's removing their files to the Federal Bureau of Investigation without their permission, the compromise to their jobs and services resulting from the compromise of Dr. Green's professional license and their confidentiality rights.

The clients in this case included the African-American Police League, several standing Chicago Police and Fireman, and the Loop Lab School, a minority owned private school. Contact from the FBI affected their careers and concern for their privacy rights which might be breached when seeking help for their children. At least one former client is now facing the death penalty. The plaintiffs further alleged that the subpoena used to justify the release of their files was defective and HCSC knew or should have known it at the time they released their files. They also claimed damages for HCSC contract benefits which they were unable to utilize because of any other minority providers with Dr. Green's credentials.

The violation of confidentiality rights of the health care subscribers by HCSC, in turning over patient files, without notice or a hearing, in the face of an obviously defective subpoena, was to knowingly further the conspiracy of IDPR to deny Dr. Green the rights of privilege of his education and professional license.

The result of the actions of all of the defendants in this case is that black males and their clients do not enjoy the same rights and protections under the law as those of other races. Black and minority clients and their providers do not enjoy the cultural validation and rights to enjoy benefits under insurance contracts as other races, and black male psychologists in Illinois suffer the worst of both worlds.

While this writ and the appeal from which it is removed is only for Dr. Green, it nevertheless involves the rights of the other included plaintiffs who were denied rights of appeal by the appellate court. For that reason, plaintiffs not plaintiff will be used throughout this writ, as the plural form accurately describes the parties whose rights were at issue in the lower courts.

1. **State Actions and their impact on federal protections.**

The plaintiffs in this case allege that the existence of the Illinois Governor's Executive Order mandates a vigilance on due process violations on both the district and appellate courts, with particular emphasis on black and minority men in the criminal, civil and administrative law courts. The plaintiffs in this case allege that because of that Executive Order, and their compliance with the FRCP, that they cannot be denied the right to default judgement for all relief sought and the right to sanctions against the offending parties. It is their belief that neither the district nor appellate courts have discretionary power to remove those rights, even with notice and hearing, when the violations result from an intentional legal strategy on the part of a litigant, and deny due process rights under the U.S. Constitution.

Further, without the real execution of sanctions threatened under FRCP Rule 11, those rules are without enforcement power. Rather than the Governor's executive order acting as a restraint to abuse of process, it has served to notice opposing counsel of black and minority men regardless of their station, throughout the state of Illinois, that their due process rights can be ignored, without sanction, without consequence, in violation of the law. As a result, any future state executive orders would constitute notice of an "open season on protected parties", rather than a notice to "cease and desist", as there would be no consequence for its violation. Because these procedural violations have lead to increased litigation costs, and lengthy, timely procedural battles, they have denied the plaintiff's speedy implementation of justice afforded them under the constitution.

Using *Marbury v. Madison* 5 U.S. 137 (1803) as their authority, the plaintiffs allege that the U.S. Constitution remains inviolate, as are the FRCP which govern their protection. State and federal government officials do not have authority to use their discretionary powers, when that discretion results in a denial of due process. Further, the plaintiffs allege that neither government court representatives nor their representatives in a legal proceedings, can retreat to 11th Amendment constitutional and qualified immunity to avoid accountability for their actions which they knew or should have known could result in a due process violation. Finally, the plaintiffs state that If a court is properly noticed of a sanctionable activity, those sanctions cannot be ignored on the court's discretionary authority alone.

The plaintiffs alleged, that because the FRCP are the governing rules for federal courts, the district and appellate courts do not have authority to ignore procedural violations under their discretionary powers, when the consequence is the denial of due process and the obstruction of law or justice as sought. The district and appellate courts in this case erred when they terminated this case without granting a default

judgement on all relief sought, for all plaintiffs, including injunctions and a hearing for determination of sanctions following intentional attempts to violate the plaintiff's due process rights. Further, the lower courts erred when it granted the defendants implied rights of res judicata and collateral estoppel, to which they are not entitled. Because they failed to comply with a lawful proceeding, the defendants have no rights of defense in subsequent litigation accorded lawful litigants. Finally, because of the consumption of time by false defense applications, the defendants' actions have barred the plaintiffs from brining any subsequent actions because of the Illinois Statute of Limitations applicable to the federal courts.

The plaintiffs sued under 42 U.S.C. sec. 1981 and 1983 and cited *Hampton v. Hanrahan*, 522 P. Supp. 140, 144 N.D. Ill, (1981) as their authority for a jury trial, as that 7th Circuit precedent required that a jury determine all conspiracy violations, not a judge. The district court further erred when it used its discretionary authority to overrule the opinion of its own circuit, determining that no conspiracy existed, without notice or a hearing, and dismissed the case.

Dr. Green has training and experience as a prescribing psychologist, a licensed clinical psychologist, a forensic psychologist, a drug and alcohol abuse psychologist, an organizational psychologist and a child and adolescent, inpatient and outpatient, specialist. While his legal credentials were not an issue for the trial court, he may also have a degree in law and a license to practice before a court of law.

As a result of the collective actions of IDPR and HCSC there are no black male psychologists available in any way equal to the percentage of either the black or total population in the Chicago metropolitan area for majority races. Of nearly 350 psychologists in the 2002 Chicago Yellow page psychologist listing, less than five are black males and only one black male licensed psychologist with training and education in clinical, forensic, substance abuse and psycho-pharmacologic psychology is available to black or white Chicagoans. That exception is Dr.

Green, whose license is the subject of this writ.

B. **The threat to the public by these discretionary violations**

The consequence of the conspiracy of the defendants is that insurance benefits to black and minority policy holders of HCSC advertised under Blue Cross Blue Shield are largely unavailable at the doctoral level by black male psychologists. Because there is no uniformity of law or professional license review in Illinois, there are no psychologists qualified under the IDPR, IDRE and HCSC contract requirements to provide the services under the policies as written. The ultimate result is that contract services purchased by black and minority policy holders under HCSC contracts, as well as those of all other insurance contracts in Illinois who service minorities, cannot be lawfully fulfilled and this knowledge was at all times known to the Illinois defendants.

The collaboration of action of these defendants in their conspiracy constitutes intentional and ongoing insurance fraud, as benefits contracted for, cannot knowingly be provided to minority health care subscribers. Blue Cross Blue Shield therefore knowingly contracts for services that it knows it can deny for failure to comply with state law and their own contracts. The conspiracy also grants the state prosecutors the right to isolate and prosecute black and minority psychologists, under authority of the law.

The acts of HCSC, d/b/a as Blue Cross Blue Shield are consistent with a national policy to deny psychologists due process rights in federal courts after more than 20 years of managed care litigation. In a notice to the appellate court, the plaintiffs filed evidence from a letter by Russ Newman, Ph.D. J.D, dated February 13, 2002, that the American Psychological Association APA has not been "able to bring a managed care company, (i.e. BCBS of the National Capital Area) into the courtroom" after nearly twenty years of managed care

litigation. It is apparent that while procedural laws are on the books and due process rights are well established,, they are not equally applied or uniformly enforced when well funded insurance companies and state agencies are involved. The cost of litigation itself, in the face of due process obstructions to the process, precludes minority plaintiffs from asserting their rights.

The cumulative result of unfair licensing practices of IDPR and contract breaches of HCSC is that psychologists and black and minority men in Illinois have no enforceable rights under written contracts, no constitutional protection for professional rights, no contracted mental health insurance benefits that can be effectively utilized by those seeking cultural validity from members of their own race, no protections under Illinois administrative law, no rights under the Illinois and Federal Rules of Civil Procedure, no privacy protection from intervention of federal government into their personal lives, no enforceable confidentiality and privacy rights, no right to practice and enjoy employment under the benefits of a professional license, no immunity protections when those immunity protections are clearly established, and no rights under appeal or rehearing. That policy is at all times known and supported by the highest legal authority in the state as the name of the current Illinois attorney general, Jim Ryan, appears on all documents in this case.

Such officially approved actions by state lawyers have rendered psychotherapy, preventive psychotherapeutic services and forensic criminal defense services unavailable for a large metropolitan community and discouraged future mental health professionals from entering the field to provide the same services. The denial of preventive services through art and artifice is in violation of the spirit of *Furman v. Georgia,* (1972).

Dr. Green presents this petition to seek expeditious certification of his default judgement, default judgement for all parties in the caption on their behalf, a permanent injunction

for all acts against his license, and sanctions for all counsel as sought during the trial phase. The actions of the state prosecutors, crossed state lines to Wisconsin to conduct a knowing fraud in knowing violation of the law and collusion with their trial counsel. Their counsel were required under the Illinois Rules of Professional Conduct to comply with the law.

When counsel for both defendants actively conspired to avoid answering the complaint and the default, crossed state lines and did in under flagrant violation of law and official procedure, they ceased to be legal representatives and became co-conspirators with their clients in an unlawful action. Even though their actions were with the knowledge and cooperation of state officials, they were essential a criminal enterprise. Accordingly, the sanctions of counsel in this case should be equal to that of their clients, and trebled because of acts in violation of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S. C. Chapters 1961-1968, (1970).

REASONS FOR GRANTING THE PETITION

The issues in this case are the most significant of any to be decided in nearly 200 years. In *Marbury v. Madison,* 5 U.S. 137 (1803), the U.S. Supreme Court declared that in any conflict between the Constitution and a law passed by Congress, the Constitution must always take precedence. In this case, the plaintiffs ask the court to address the conflict between law as written under the U.S. Constitution, and protected by the Federal Rules of Civil Procedure, and the discretionary powers granted its representatives for the protection of those laws.

1. District Court Conversion of Memorandum to Answer

The trial court's discretionary conversion of a "Memorandum" to a lawful "Answer" without notice to either party and its termination of the case, with prejudice, for all

captioned parties, without a ruling on the motion for default judgement or sanctions, was an err in violation of the FRCP and the 14th Amendment civil rights of Dr. Green and the other plaintiffs.

During the trial phase, both the Illinois defendants and HCSC informally conversed with the trial judge in open court and asked the judge if they could allow their previous answers to stand as answer to the newly filed Second Amended Complaint. The judge indicated no objection. The defendants filed no motions or sought any orders to clarify or certify this informal conversation. The defendants subsequently filed a series of "Memorandums", none of which were responsive to the Second Amended Complaint or to the additional party's claims.

The trial court subsequently converted, with notice to all parties, a previously filed "Motion to Dismiss" from the Illinois defendants into a "Motion for Summary Judgement" which the plaintiffs declined to answer. In declining, the plaintiffs preserved their right to contest the failure to comply with Rule 12a as there was no "Motion to Dismiss" responsive to the Second Amended Complaint on file (Dkt, 48). Also, as the docket summary clearly confirms, the defendants did not motion the court to accept any of their prior objections or defenses, including their rights under the11th Amendment violations, the Younger Abstention or federal civil rights conspiracy legislation.

The trial court issued its first final ruling on September 28, 2000 and used as the basis for its action one of the "Memorandums" on file. The trial court dismissed the plaintiff's complaint. The plaintiffs appealed, and the case was remanded because of a procedural error on the part of the trial court. During the period the error was corrected, the plaintiff's filed a motion for default and default judgement, which was duly served on all parties and replied to by HCSC.

Despite the notice of a procedural failure, and notice

for default and default judgement, none of the defaulted defendants acted to correct their lack of a timely filed answer. The district court issued a subsequent final order relating back to the September 28, 2000 decision on January 30, 2001 and the plaintiffs appealed again. The appeal for the Illinois defendants was remanded for another procedural error. A final order for the Illinois defendants was issued June 1, 2001.

During the second appeal for both defendants, the plaintiffs cited the default, among a series of other objections to dismissal. The appellate court accepted an appeal for plaintiff Green, but would not accept an appeal for Associated Psychological Services, Psychological Solutions, and Related Clients and Staff.

In its ruling, the appellate court indicated that the district court "never decided any of their (the additional plaintiff's) claims", and further denied the right to default to the appellant as well. The court further erred when it used its discretionary power to remove Benden and Palermo from the case, though they were not excluded in the appeal. The appellate court reported that the other included plaintiffs were unrepresented by counsel before the district court, based on the defendant's statements alone. The appellate court denied the default against HCSC accepting their written affirmation that they had replied to the moving complaint and complied with Rule 12a, when in fact the docket summary did not support their facts.

FRCP Rule 12a requires that a defendant respond to a lawfully served complaint "within 20 days" after the service of the complaint Accordingly, the district court in its Minute Order of April 26, 2000, ordered the defendants to reply to the plaintiffs' Second Amended Complaint by May 16, 2000. As the docket summary will show, neither the Illinois defendants or HCSC complied. On May 10, 2000, the defendants filed five "Memorandums," (Dkts. 40, 41, 42-1, 42-2, 43) and one Response (Dkt. 43-2) but none purported to serve as an

"Answer" or a "Motion" as required under Rule 12a. The plaintiffs allege the defendants intentionally filed "Memorandums" and "Responses" and did not seek any hearings responsive to their pleadings, to limit plaintiff answers and hearings on their claims.

A "Memorandum" is not considered a responsive answer under the FRCP. The federal courts have ruled that a memorandum is not an "Answer" or a "Motion"and instead serves as a "brief note, in writing of some transaction or an outline of some *intended* instrument." 43 P. 896, 899.

The docket summary reflects that the trial court judge gave the defendants wide latitude to respond or amend their actions and the defendants did not avail themselves of his many opportunities. Any one of the five "Memorandums" could have been altered to meet the requirements of the law by motion to the court. HCSC had a counter-claim on file which could have been amended to meet the requirements of Rule 12a, but it was dismissed (dkt. 79), on their own oral motion before a final ruling. The defendants, Benden and Palermo, filed affidavits on June 23, 2000 which could have been amended on a motion to the court to meet the requirements of Rule 12a.

The Wisconsin defendants, remaining defendants in this case, from which this appeal was removed, properly followed the law in their answer and filed a "Motion to Dismiss" (Dkt. 74) in accordance with Rule 12a. The district and appellate court erred when it allowed HCSC and the Illinois Defendants to avoid complying with the FRCP and held the Wisconsin defendants to the legal standard.

The Illinois defendants ignored the default notice. Under FRCP Rule 60b, the defendants could have motioned the court to set aside its judgement to file a proper answer or have motioned the court to have the plaintiffs Associated Psychological Services, Psychological Solutions, P.C. and Related Clients and Staff removed from the case and the caption, but did not do so. By any conservative estimation, the

defendants had 13 opportunities to comply with Rule 12a, five "Memorandums" they could have converted, one "Response," two affidavits they could have converted, three final orders which they could have appealed or asked to be set aside while they corrected their defect, and finally the default and default memorandum notice. This does not include the other opportunities provided by their appearance before the court.

In their Appellee Reply to the district court ruling, the HCSC defendants noted that the trial court judge gave them authority to correct their pleadings. R. Transcript, vol 8, p.4, *ll.* 6-21[e.g., Court:

> "I don't see that there is anything to be made by forcing people to re-file things"]; App. Brf., p 19 [The defendants asked the Court to allow their premature filing to stand as answer to the subsequently admitted complaint and the court agreed."]) Nonetheless, on May 16, 2000, HCSC filed a motion to dismiss or in the alternative, a motion for summary judgement responsive to the Second Amended Complaint." *App. Brf., p. 14.*

The docket summary is the official record of the case, not the judge's verbal observations. There is no evidence in the docket or evidence in the proffered appellate court transcript that identifies the intent of the court's observation. Based on HCSC's pleadings, it remains uncertain which "people" (HCSC or the Illinois defendants) the trial court was referring to, or whether the defendant's were referring to the "Complaint" or the "Amended Complaint " in their conversation with the court. The lack of specificity, along with the defendant's failure to specify it by their own answer or motion to the court, renders the judge's verbal observation unenforceable under the void-for-vagueness doctrine, as well as the procedural defect.

There are *no* defendant entries in the official docket

summary for May 16, 2000. This statement that there was constituted an intentional, willful and purposeful violation of Rule 11, and the trial and appellate courts erred when they failed to grant the default and sanctions for intentionally failing to file a lawfully acceptable answer.

Because there is no record of an answer in compliance with Rule 12a for HCSC, and because the HCSC counsel filed intentional misapplications before the district and appellate court, the default judgement should be granted and the sanctions against defense counsel should have followed.

Because the Illinois defendants failed to respond to the April 16th order as well, the district and appellate courts erred when they failed to strike their memorandums, responses, objections and appeals as unresponsive. The fact that the Illinois defendants did not compound their negligence with an intentional misdirection to the court, as did HCSC, did not alleviate their default.

The trial court erred when it based its final orders on defense memorandums (Dkt. 41-1) and (Dkt. 42-1) as this case could not lawfully proceed until an answer had been filed. All defense motions, all defense applications, all defense responses, and all defense contests to any plaintiff claims, including their responses in appeal and appellate objections to the other included party representation, must accordingly be stricken for both HCSC and the Illinois defendants.

The trial court entered the plaintiff's notice of default judgement January 9, 2001, (Dkt. 91) then terminated the case with prejudice 21 days later, without an answer from either defendant. As all defendants were represented by counsel, even though all counsel had not filed a notice of appearance, the defendants had notice that they were required under the FRCP to respond within 20 days. They did not do so, consistent with their ongoing pattern of ignoring FRCP requirements. The trial court, upon terminating the case for HCSC in 21 days and for the Illinois Defendants four months later, did not abridge any

of their rights under 12a before issuing its final order.

Accordingly, the defendants are in default, and as that default has persisted for more than a calendar year, and the defendants have not appealed or sought any toll of their rights to object to the motion for default, the trial court has no other authority, under Rules 60b, 55a and 54c, than to issue a default order and default judgement and erred when it failed to grant the plaintiffs their relief as sought.

The defendants were required under 12(b) to assert their claims of representation at the trial level or preserve the defense of "insufficiency of process," which is the legal question in contest, under Rule 12(h), when questioning the propriety of legal representation. Because the defendants failed to file their objections at the trial level, and allowed the case to end with a default, they waived any objections to the outcome.

By the failure of the defendants to answer the complaint or motion the court to remove the plaintiffs, Associated Psychological Services, Psychological Solutions, P.C. and Related Clients and Staff from the caption, the other included parties and their representation achieved legitimacy of their claims. They survived the case to judgement in the caption, and entry by the court clerk and are therefore entitled to their default. The defendants allowed the case to end without having any of their 19 possible defenses under 8c to the Second Amended Complaint entered.

2. **The appellate court erred when it permitted the defendants appeal rights, while denying those same rights to all plaintiffs in the caption of the final order.**

At all times, in all pleadings, all plaintiffs began their applications to the court by stating, "Theophilus Green, pro se, and Theophilus Green on behalf of plaintiffs Associated Psychological Services, Psychological Solutions, P.C. and Related Clients and Staff in this action," and thereby evidenced

Dr. Green's representation of all plaintiffs. There was no question that the court and the defendants knew Dr. Green was representing all captioned plaintiffs. The literal Latin translation of "pro se" is "on one's own behalf;" it does not mean that the person proceeding does so without a legal degree. There was no real or intended misrepresentation to the court or any represented party.

Moreover, as the threat to plaintiff Green's professional credentials were real, his own license to practice psychology compromised by the conspiracy at issue, he was justified and even required to withhold further credentialing, as he too was noticed by the Illinois Governor's Executive Order and evidence of grave due process defects in Illinois.

The issue of the representation of the other included parties was not before the appellate court and the defendants filed no counter-appeal placing them before that court. The issue of representation should have been addressed by the defendants at trial court or in their many "Memorandums" as the defendants apparently consider them their lawful answer.

In its ruling, the appellate court based its denial of relief to the other included plaintiff's claims on defense claims of representation based on *Lewis v. Lenc-Smith Mfg., Co.,* 784 F. 2nd 829, 839-31 (7th Cir, 1986). However, the appellate court erred in basing its ruling on that case. In that case, the defendants were not in default, having answered a legally noticed complaint, and there was no motion for default judgement pending. Also in that case, the defendants raised their contest of representation and credentials during the trial phase, not at the appellate level. Finally, in *Lewis v. Lenc-Smith Mfg., Co.*,(1986) there was clear and uncontested documentation that the parties filing the action at issue were not lawyers. None of those three issues are true for this matter.

Further, neither the defendants, nor the appellate court provided any precedent that provided that a moving complaint could be ignored by the failure alone, to file a notice of

appearance, that was not addressed at trial. Likewise, they provided no precedent that a moving plaintiff's right to default or appeal, could be denied without notice to, or leave from, the convening court of authority.

As the Illinois Governor had served notice to the public by his Executive Order that he was unable to insure 14th Amendment protections and due process rights to minorities, the failure of the appellate court to revisit its ruling in the face of a due process violation, rendered the U.S. Constitution unenforceable for psychologists and black and minority men not only in Illinois, but the entire 7th Circuit which includes Wisconsin and Indiana.

As Dr. Green's had professional licenses in each of those states, the failure of the 7th Circuit to enforce due process mandated the timely and expensive visit to the U.S. Supreme Court. The appellate court's actions placed an unfair burden on the minority plaintiffs, following as it did a lawfully motioned default and default judgement hearing before the lower courts.

The defendants violated FRCP Rules 8d, 11, 12a, 12b, 12h, 55a, 54c, 60a and 79a, ignored a default notice, prevailed at appeal and violated or ignored virtually every state statute, including the Statute of Limitations, every contract requirement, and every major state and federal civil court procedural requirement.

The defendants in this case had at least thirteen opportunities to correct their default following notice of their default and the motion for default judgement. Each time they failed to do so, not individually, but collectively, and neither the Illinois defendants nor the HCSC defendants claimed any error or mistake as a defense. The actions of these defendants must therefore be construed as purposeful and part of common legal strategy in furtherance of a conspiracy before the court. To allow the defendants to fail to address the issues of the plaintiffs in the caption during the trial phase, yet deny the

plaintiffs rights of default and appeal, is a denial of due process, and a violation of FRCP Rules 12a, 54c, 55a, and 8d.

In furtherance of the appellate court's error regarding credentialing, the plaintiffs noted in their Petition for Rehearing En Banc, that the Illinois defendants included two names on all their briefs who also failed to file the necessary documents for appearance. Attorney General Jim Ryan and Solicitor General Joel D. Bertocchi, were listed as counsel to all Illinois defendant actions, but failed to sign the same appearance documents.

The appellate court erred when it struck the application of the additional plaintiffs for default and appeal rights, without notice or a hearing to either party. As the parties whose notice of appearance the appellate court ignored were white, and the parties it chose to challenge where black, the appellate court clouded their position as objective arbiters of fact and raised further issues of 14th Amendment violations in Illinois.

As the appellate court apparently assumed that the state officers had the mandatory legal degree, it could also be assumed that all parties at the trial court had independent knowledge of Dr. Green's legal credentials, because there was no challenge. The appellate court lacked authority to substitute its assumptions for issues, not contested as fact, during the trial phase.

There is no evidence available to the district or appellate court that the failure of plaintiff Green to sign a notice of appearance, in representation of the other included parties, was anything but an error or mistake, like the failure of the attorney general and solicitor general to file a similar notice of appearance. There was no evidence presented to the district or appellate court that, like many psychologists, (including Dr. Lisa Grossman, who is white, and testified at the temporary injunction hearing), Dr. Green was not a licensed lawyer, as well as a licensed psychologist.

Unlike the plaintiffs in *Lewis v. Lenc-Smith Mfg. Co.*,

(1986) noted by the appellate court in their ruling, no claims to documentation of the legal credentials of Dr. Green or contests of his representation of the other plaintiffs were ever filed. Because this case was one of contest of professional psychology credentials, Dr. Green was justified in avoiding any contest of his other professional credentials. Further, he was entitled to do so under the FRCP, which waived the defendants' right to contest "insufficiency of process" if it "is neither made by motion under this rule nor included in a responsive pleading...." (FRCP Rule 12h).

The formal docket summary shows no evidence the defendants filed a responsive pleading or a proper objection to the complaint at issue, no motions to strike either the other included parties from the caption or the representation of their claims by Dr. Green and no motion to have their previous objections accepted for the moving complaint.

If a lawful objection to Dr. Green's failure to file a notice of appearance had been raised during trial, there were numerous defenses or alternatives available to him and the other plaintiffs. Given proper notice, the plaintiffs could have corrected their error by filing a proper notice of appearance, with leave of the court. During the temporary injunction hearing of April 4-5, 2000, more than forty of the other included plaintiffs appeared, all whom were prepared to sign the complaint as pro se if that been a requirement.

Neither the court, nor the defendants, were under any impression that the addition of thousands of other pro se clients would have been an obstacle for Dr. Green. The defendant's decision not to contest Dr. Green's representation of the interests of the other included plaintiffs was both in the interest of judicial efficiency as well as court decorum and order. Neither the district court's failure to address their claims or the appellate court's speculations about their representation, constitute the basis for denying the other plaintiffs due process claims, without notice or a hearing, when this case was

terminated with prejudice.

Further, both the district and the appellate courts failed to note there was no delay in the proceedings caused by Dr. Green's representations. The integrity of the legal process was at all times respected and protected because the other plaintiffs, at all times maintained "shadow counsel." At all times, and for all plaintiff issues, their rights and privileges were monitored by licensed Illinois lawyers, either in the courtroom or available by phone. Because the ongoing and lower court proceedings consumed a great deal of time, because the proceedings were exceedingly costly, and because the defendants did not motion the court to contest Dr. Green's representations, the "shadow counsels" were never lawfully a party to the case and thus were never identified. As they made no appearances, filed no applications and signed no court documents, they did not violate any ethical cannons as lawyers.

As the abuses caused by the defendant's failure to comply with the FRCP were so numerous, so timely, and so costly, the implementation of a court room procedure more common in criminal trials by criminal prosecutors, was necessary to "secure the just, speedy, and inexpensive determination of every action," as governed by FRCP, Rule 1.

Because the defendants failed to contest the representation of plaintiffs during the trial, but contested the representation at the appellate level, they acknowledged to the court that they were aware of the defense available to them, but chose not to use it during the lawfully provided time. In doing so, they provided evidence to the court they had knowledge of their rights, and the consequence of default, in the lower court when they waived them, under Rule 12h. Their actions did not preserve the defendant's rights on appeal.

As the claims of the other included parties survived the caption of the final order, four times, both the public and all future judicial authorities must assume they were addressed and properly represented.

By their actions, the defendants are continuing an Illinois pattern, that says "Judge, I'm white. The defendant is black. I didn't follow the law. Cover me on this one. Appellate court, if you can't find a way to rule in my favor, don't rule at all. You have the discretion to do so." Regardless of the court's purpose or intent, the failure of the defendants to comply with the FRCP casts doubt on the integrity of the subsequent decision.

The authority of the appellate court, mandated by the U.S. Supreme Court, to insure a fair and equal application of all laws and procedures for all U.S. citizens remains the controlling authority. The application of default and default judgement for all relief sought as filed in compliance with FRCP Rule 55a, is consistent with that mandate. The appellate court order to remand, dismiss and abstain rehearing for the Illinois defendants is in error. The order to affirm and abstain the favorable ruling given to HCSC is likewise, in error.

3. **The appellate court erred when it remanded a case to the district level for implementation of a law, based on the Younger Abstention, that while relevant during trial, was not applicable at the time of the district court's decision.**

The appellate court's decision prevented the plaintiffs due process in that the plaintiffs could not foresee that a law not valid in application could be used to violate their rights without notice or a hearing.

The appellate court erred when it affirmed the district court's decision for HCSC accepting the written statement) that they had filed a lawful answer on May 16, 2000 in response to the court's Minute Order of April 26, 2000. The court docket includes no such defendant entry for that date and the defendants did not claim error or mistake in either the district or the appellate court proceedings.

The appellate court further erred when it ruled that the

Illinois defendants should have been permitted to abstain from the proceedings under the Younger Abstention *(Younger v. Harris,* 401 U.S. 37, 91 S. Ct. 746 *(1971)* as the Illinois defendants had petitioned.

The appellate court's ruling to vacate and remand grants the Illinois defendants rights to which they are not lawfully entitled because of the default and presumes that the plaintiffs could not have prevailed, had a hearing on the Younger Abstention and the plaintiff representation been properly noticed.

The defendants never sought such hearings or a ruling on the Younger Abstention, and more importantly, did not motion the court to accept their objections under previous complaints, which included the abstention argument, to the moving Second Amended Complaint. There was not, therefore a lawful application before any court regarding the Younger Abstention. The plaintiffs were not required to demand a hearing to prove that the defendants lacked foundation or jurisdiction for their defenses, as the defendants were in default.

More significantly, at the time the district court issued its appealable ruling, January 31, 2001 and June 4, 2001, the Younger Abstention was not available as a defense. The state courts had dismissed the state action January 17, 2001. (Appendix D.)

The appellate court erred when it used its discretionary power to assume that such a hearing, if requested, would have resulted in abstention. The appellate court further erred when it ruled that the plaintiffs were required to bring their 14th Amendment claims in their state administrative appeal, when the purpose for raising claims and the existence of the 42 U.S.C. secs. 1981 and 1983 was to remove to the federal courts, violations in the state court that denied due process in those courts.

4. **The appellate and district courts erred when not requiring certification of a state law whose conflicts affected the health and welfare of millions of Illinois citizens and thousands of psychologists throughout the state.**

In both the district and the appellate court pleadings, the plaintiffs asked the court to take notice of two different and conflicting state documents. The state legislature granted authority to discipline psychologists to the "Department of Registration and Education", "Effective January 1, 1989".(5352, Chapter 111, Profession and Occupations, paragraphs 2, subparagraphs (1)(2)State of Illinois.) Without notice of a change or justification, the "Department of Professional Regulation" assumed those responsibilities, contrary to the state law. In all published materials, e.g. the official department brochure for "The Clinical Psychologist Licensing Act," IDPR restates that authority, citing P.A. 85-947, certified December 2, 1987, effective January 1, 1989, and "As amended by P.A. 85-1305,"Effective January 1, 1989." as the Department of Professional Regulation, which is not the law.

The plaintiffs asked the appellate court for a certification of state law question to determine which state department had lawful authority, but that motion was denied. As the appellate court felt the district court had authority to dismiss the Illinois defendants under the Younger Abstention, a certification of that question was therefore moot. However, as HCSC had contracts with Dr. Green and his companies, based on licensure by the Illinois Department of Registration and Education, not the Illinois Department of Professional Regulation which removed his license, and as they continued to withhold $580,000 in reimbursements under an unlawfully breached contract, that question still required clarification for the remaining Wisconsin defendants in this case.

The appellate court, in denying the plaintiff's petition for Certification of State Law Question closed out the opportunity to establish "extraordinary circumstances" even had the Younger Abstention been available. The Illinois Department of Professional Regulation lacks authority under the Illinois Legislature to revoke or discipline any clinical psychology license that was given to the Department of Professional Regulation without a notice and hearing to all affected parties, which the Illinois defendants did not show occurred.

HCSC knew or should have known of this process violations as it acted on them by withholding Dr. Green's provider reimbursements of $580,000 because of the license removal, which they freely admit in their pleading as evidenced by the district court order. The appellate court cannot state with a certainty, that there was no communication, and therefore no conspiracy, between HCSC and IDPR when HCSC admits it acted on information only IDPR could provide.

Under simple contract law, the defendants were limited by the plain meaning rule. (*Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998).

Summary

The role of this and all lower courts in the face of a properly noticed hearing for default judgement is clear. However, the failure of this court to rule on discretionary departures that deny due process, and intentional FRCP violations that obstruct justice while allowing government official to retreat to professional immunity protections are not. The failure of this court to address these issues at this time, would grant Illinois police, prosecutors and court officials the right to continue to alter the letter of the U.S. Constitution, that *Marbury v. Madison* (1803) and *Furman v. Georgia*(1972) sought to deny. There should be no constitutional immunity to claim negligence when there is knowledge or intent to do harm,

or escape sanctions from the commission of knowingly harmful acts, when due process violations could have been avoided.

If a proper answer had been filed, and hearings properly noticed and held there is no evidence to suggest the plaintiffs could not have prevailed before a hearing on all procedural objections or the final trial by jury. The trial court erred and abused its discretionary powers, when it denied the plaintiffs a trial by jury on the merits, in violation of its own circuit ruling, *Hampton v. Hanrahan* (1981). The district court lacked discretionary authority to dismiss the proceedings following a default, and the appellate court lacked discretionary authority to abstain from a rehearing on evidence of a denial of due process. By doing so, the district and appellate courts effectively transferred their judicial immunity to the defendants.

The defendants have no new rights under appeal that they did not enjoy during the trial phase, and any errors related to the filing of an appearance cannot be construed as anything but inadvertent, since the court and all defendants knew by the caption and the applications that "Theophilus Green" represented the interests of the other plaintiffs. There is no evidence on file to suggest that the inadvertence was material to the denial of due process for the defendants.

Once the court issued its final order with the other included plaintiffs in the caption, and the clerk entered the final judgement with the other included plaintiffs in the official docket summary, and once the plaintiffs filed a properly noticed motion for default judgement, and the defendants were in default for more than a year, this case was a finality. Dr. Green is by default, the lawful representative of all plaintiffs, for all issues related to sanctions and default, and the default judgment, provided proper notice of hearing. That hearing was held and the defendants took no action to objection to the hearing, correct the default, or appeal. The default judgment must be entered as a matter of law and RICO sanctions due apply.

Further, if the district and appellate court decisions were affirmed, it would mark a return to the 19th century standard of two forms of justice, under *Plessy v. Ferguson,* 163 U.S. 537 (1986), which this court struck down in *Brown v. Board of Education of Topeka,* 347 U.S. 483 (1954); 349 U.S. 294 (1955 (1954). Finally, it would effectively deny a litigant the benefit of counsel, which this court protected under *Gideon v. Wainright,* 372 U.S. 335 (1963). If police, a prosecutor or representative before the court could knowingly ignore due process protections, then assert the defense of immunity, it would render any legal representation null and void.

The Attorney Registration and Disciplinary Commission, the disciplinary authority for all attorneys in Illinois, like similar agencies in all states, will not accept a complaint based on evidence of fraudulent filings and violations of Rule 11, without a ruling from the court that those pleadings are in fact false. That determination is discretionary to the court, the law is not.

The counsel in this case counted on, relied on, expected and predicted, that judicial discretion would cover them when procedural fraud and intentional disregard for the law and the court's order could not justify their legal recklessness.

Dr. Green stated in his appellate action and restates here that the conspiracy alleged in this claim was life threatening, that he enjoyed no protections for his constitutional due process rights at the state or federal level, and that revealing any further information about his professional credentials or seeking greater relief of his rights violations at the state level could only have triggered additional 14th Amendment violations and forced him as well as the other plaintiffs, to abandon their constitutional rights to trial.

For Dr. Green to obtain justice under the law, it was necessary for him to withhold his knowledge of the law. It is a conundrum made necessary by abuse of discretionary privilege in Illinois, applied in an unfair way sexually, racially, and professionally, in defiance of the U.S. Constitution with

knowledge of the highest legal authorities.

Conclusion

This case should be remanded to the district court for expeditious execution of the default judgement for all captioned parties on all relief as sought, and a hearing on sanctions and RICO penalties. This case should be remanded to the 7th Circuit U.S. Appellate Court to instruct the state court for a speedy Certification of State Law Question to permit trial for the remaining defendants.

The petition for a writ of certiorari should be granted on the remaining issues of discretionary privilege that violate due process and the issue of mandatory appellate rehearings on notice of legal defect, so that this case may continue its proper course to resolution.

Respectfully submitted,

Theophilus Green, Psy. D
225 West Washington, Ste 2200
Chicago, Illinois 60606
312-419-7199

Submitted May, 2002

APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 01-1328, 01-2399

THEOPHILUS GREEN,

Plaintiff-Appellant,

v.

MARY ANN BENDEN, et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Northern District of Illinois, Eastern Division. No. 99 C 6002--Wayne R. Andersen, Judge.
Submitted December 14, 2001--Decided February 21, 2002

Before Fairchild, Diane P. Wood, and Williams, Circuit Judges.

Williams, Circuit Judge.

TheophilusGreen sued under 42 U.S.C. secs. 1981and 1983, alleging that the Illinois Department of Professional Regulation("DPR") and two DPR attorneys (collectively, the "Illinois Defendants") violated his rights to due process and equal protection in bringing administrative disciplinary proceedings against him to suspend his clinical psychologist's

license. Dr. Green also asserted a claim under 42 U.S.C. sec. 1985 for civil conspiracy against the DPR and Health Care Service Corporation ("HCSC"). The district court dismissed some of Dr. Green's claims and granted summary judgment to the defendants on the remaining claims. Dr. Green appeals, and we affirm in part and vacate in part.

I. Factual Background

Dr. Green, an African American, received a degree in clinical psychology in 1982 and from then until 1989 practiced clinical psychology in Illinois without a license. In 1990 Dr. Green passed the Illinois clinical psychologist's examination and obtained a license.

In 1996 the DPR instituted disciplinary proceedings against Dr. Green, alleging that he had violated Illinois law by practicing clinical psychology without a license and by making false statements on another psychologist's licensing application forms. After a hearing the DPR's disciplinary board suspended Dr. Green's license for a minimum of two years and imposed various conditions on its reinstatement. The disciplinary board also barred Dr. Green from supervising prospective licensees as long as his license was suspended and fined him $8,000. Thereafter, HCSC, which required psychologists to be licensed as a prerequisite to reimbursement, ceased all payments to Dr. Green for services that he rendered to its insureds.

Dr. Green sought administrative review in state court; the Circuit Court of Cook County, Illinois, upheld the suspension but vacated the fine. Dr. Green appealed to the Illinois Appellate Court.

Dr. Green's state-court appeal was still pending when in September 1999 he filed this lawsuit. Dr. Green alleged that the

Illinois Defendants violated his rights to due process and equal protection by targeting him for disciplinary action based on his race and in retaliation for his testimony in another disciplinary hearing that was favorable to the psychologist under investigation. Dr. Green further alleged that HCSC and the DPR had conspired "to deny [him] the opportunity to . . . practice his profession" based on his race because HCSC (1) refused to reimburse him for services he rendered to its insureds, and (2) provided his patients' confidential medical reports and other unspecified information to the Federal Bureau of Investigation in response to grand jury subpoenas. Dr. Green also asserted claims against the Wisconsin Department of Professional Regulation and certain of its representatives, but those claims are not a part of this appeal. Dr. Green sought a declaration that the DPR disciplinary proceedings were illegal and an award of damages. In November 1999 Dr. Green also sought a preliminary injunction ordering the DPR to restore his license.

II. The District Court Proceedings

In April 2000 the district court denied Dr. Green's request for injunctive relief. The court concluded that Dr. Green had not demonstrated a likelihood of success on the merits because he presented no evidence that the DPR proceedings were racially motivated.

In September the court entered orders dismissing some of Dr. Green's claims and granting summary judgment to the defendants on the remaining claims. Specifically, the court dismissed the entire suit against the DPR and its attorneys in their official capacities, concluding that they were immune under the Eleventh Amendment of the United States Constitution. The court granted summary judgment in favor of HCSC as to the civil conspiracy claim, concluding that Dr. Green

presented no evidence that HCSC's actions were motivated by racial animus. Finally, the court granted summary judgment to the DPR attorneys in their individual capacities, a ruling that Dr. Green does not challenge on appeal.

In January 2001 the district court entered a partial judgment under Federal Rule of Civil Procedure 54(b) as to HCSC. Dr. Green timely filed a notice of appeal, which was assigned docket number 01-1328. In June 2001 the district court entered a partial judgment under Rule 54(b) as to the Illinois Defendants. Dr. Green timely filed a notice of appeal, which was assigned docket number 01-2399. We consolidated the appeals on our own motion.

III. Analysis

On appeal Dr. Green challenges the district court's denial of injunctive relief and the grant of summary judgment as to his civil conspiracy claim. Dr. Green also contends that the district court erred in failing to enter a default judgment in favor of his co-plaintiffs. At the outset, we dispense with Dr. Green's default judgment argument. Any claims that Dr. Green's co-plaintiffs, Associated Psychological Services and Psychological Solutions, P.C., might otherwise have are not before us. The co-plaintiffs were unrepresented before the district court, which never decided any of their claims. Additionally, the co- plaintiffs are unrepresented before this court and have not filed notices of appeal on their own behalf. See Lewis v. Lenc-Smith Mfg. Co., 784 F.2d 829, 830-31(7th Cir. 1986). We therefore limit our review to Dr. Green's remaining arguments on appeal.

A. Civil Conspiracy

Dr. Green's argument is difficult to grasp, but he appears to contend that the district court erred in granting summary judgment by ignoring evidence that establishes the existence of a conspiracy between HCSC and the DPR. First, Dr. Green

highlights two affidavits--one from Allen Piening, the psychologist in whose disciplinary hearing Dr. Green testified, and one from J. Chris Goodman, Dr. Piening's attorney. Dr. Green argues that these affidavits show that the DPR targeted him for prosecution based on his race. Second, Dr. Green claims that he presented evidence that HCSC breached an unspecified legal duty to investigate the DPR's charges and assist him in establishing that he was immune from the disciplinary proceedings.

We first note that the district court relied on documents extraneous to the complaint but nonetheless analyzed the conspiracy claim in the context of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Thus, the court effectively converted HCSC's motion to dismiss into one for summary judgment, see Fed. R. Civ. P. 12(c), but the record is not clear as to whether the court gave Dr. Green the requisite notice of conversion and an opportunity to respond, see id.; Massey v. Helman, 259 F.3d 641, 646 n.8 (7th Cir. 2001). The procedural oversight, assuming it exists, does not require reversal if there is nothing that Dr. Green could have submitted to the court that would have created a genuine issue of fact, see id., and that is the case here. The district court granted Dr. Green an evidentiary hearing and repeatedly allowed him to submit new evidentiary materials in support of his conspiracy claim. In our de novo review, we construe the evidence in the light most favorable to Dr. Green, drawing all reasonable inferences in his favor. Velasco v. Ill. Dep't of Human Servs., 246 F.3d 1010, 1016 (7th Cir. 2001).

To establish a claim for civil conspiracy under sec. 1985(3), a plaintiff must demonstrate (1) the existence of a conspiracy, (2) a purpose of depriving a person or class of persons of equal protection of the laws, (3) an act in furtherance of a conspiracy, and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens. Hernandez v. Joliet Police Dep't, 197 F.3d 256, 263 (7th Cir. 1999). The plaintiff

also must show some racial, or otherwise class-based, invidiously discriminatory animus behind the conspirators' actions, and that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment. Majeske v. Fraternal Order of Police, Local Lodge No. 7, 94 F.3d 307, 311 (7th Cir. 1996). To establish the existence of a conspiracy, a plaintiff must show that the conspirators agreed to inflict injury upon him; in other words, that they acted with a single plan, the general nature and scope of which was known to each conspirator. Hernandez, 197 F.3d at 263.

Agreement may be inferred from circumstantial evidence, but only if it is sufficient to permit a reasonable jury to conclude that a meeting of the minds had occurred and that the parties had an understanding to achieve the conspiracy's objectives. Id.

The record contains no evidence that anyone representing HCSC had any relationship or contact with anyone representing the DPR before or during the disciplinary proceedings, let alone specifically agreed to injure Dr. Green. Mr. Goodman's and Dr. Piening's affidavits are not evidence of a conspiracy; they do not mention HCSC and are limited to the affiants' observations about Dr. Piening's and Dr. Green's disciplinary hearings. Nor do the affidavits contain anything to suggest that the Illinois Defendants targeted Dr. Green based on his race. Similarly, Dr. Green's bare assertion that HCSC breached a legal duty to help him develop an immunity defense to the disciplinary proceedings, while being legally unsupportable, in no way suggests collusion with the DPR. Dr. Green cannot establish the existence of a conspiracy, and summary judgment was appropriate for that reason. Thus, we need not analyze the other shortcomings of his claim.

B. The Illinois Defendants

We do not reach the merits of Dr. Green's challenge to the

denial of his request for injunctive relief because we agree with the Illinois Defendants that the district court should have abstained under Younger v. Harris, 401 U.S. 37 (1971), and its progeny. The Younger abstention doctrine requires federal courts to abstain from enjoining ongoing state proceedings that are (1) judicial in nature, (2) implicate important state interests, and (3) offer an adequate opportunity for review of constitutional claims, (4) so long as no extraordinary circumstances exist which would make abstention inappropriate. Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 432, 436-37 (1982); Majors v. Engelbrecht, 149 F.3d 709, 711(7th Cir. 1998).

As an initial matter, we reject Dr. Green's argument on appeal that the DPR waived its Younger argument. We recognize that a state may waive Younger abstention, see Ohio Bureau of Employment Servs. v. Hodory, 431 U.S. 471, 477-80 (1977); Kendall-Jackson Winery, Ltd. v. Branson, 212 F.3d 995, 997 (7th Cir. 2000), but our review of the record reveals that in responding to Dr. Green's complaint and request for injunctive relief the Illinois Defendants repeatedly requested that the district court abstain under Younger.

The Younger factors all favor abstention. First, Dr. Green's state-court administrative review action, which plainly is judicial in nature, was pending when he filed this lawsuit. Whether the state action is still pending does not matter for our purposes, see Majors, 149 F.3d at 712, although as far as we know it is still pending.

Second, the DPR proceedings implicate important state interests in the regulation and licensing of mental healthcare professionals. See Majors, 149 F.3d at 713 ("That the regulation and licensing of healthcare professionals is an important matter of state concern is beyond dispute.").

Third, state-court administrative review of the DPR proceedings constitutes an adequate opportunity for Dr. Green to raise his due process and equal protection challenges. See

Ohio State Civil Rights Comm'n v. Dayton Christian Schs., Inc., 477 U.S. 619, 629 (1986).

This is because under Illinois law, Dr. Green could have brought these challenges along with his claim for administrative review. See Stykel v. City of Freeport, 742 N.E.2d 906, 914 (Ill. App. Ct. 2001); Nelson v. Murphy, 44 F.3d 497, 502 (7th Cir. 1995). It matters not whether Dr. Green actually presented these challenges in state court. "[W]hen a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that the state procedures will afford an adequate remedy." Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 15 (1987).

Finally, Dr. Green does not claim that any extraordinary circumstances exist that make abstention inappropriate. See Ramsden v. AgriBank, FCB, 214 F.3d 865, 871 (7th Cir.) (party claiming extraordinary circumstances must demonstrate their existence), cert. denied, 531 U.S. 1036 (2000).

The district court should have abstained, and the only remaining question is how--by dismissing or merely staying the action. A stay is appropriate when a plaintiff is foreclosed from bringing his damages claims in the state proceeding. See Majors, 149 F.3d at 714; Simpson v. Rowan, 73 F.3d 134, 138-39 (7th Cir. 1995). But here Dr. Green could have brought his claim for damages along with his claim for administrative review. See Stykel, 742 N.E.2d at 914; Nelson, 44 F.3d at 502. We thus conclude that dismissal, rather than a stay of the claims against the Illinois Defendants, was appropriate here.

Accordingly, the district court's decision is AFFIRMED as to Dr. Green's civil conspiracy claim against HCSC. The district court's order as to the Illinois Defendants is VACATED and this case is REMANDED with directions to dismiss under Younger v. Harris as to the Illinois Defendants. Dr. Green's Petition For Certification of State Law Question,filed on May 24, 2001, is DENIED as moot.

APPENDIX B1

In the United States District Court
For The Northern District of Illinois
Eastern Division

Judgement in a Civil Case
Case Number 99C6002
September 28, 2000

THEOPHILUS GREEN, et al
v.
Mary Anne Benden et al

Decision by Court. This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that HCSC's motion to dismiss the second amended complaint [41-1] is granted and Count IV is dismissed. IDPR, Benden and Palermo's motion to dismiss the second amended complaint [42-1] is granted and Count 1 and II are dismissed against the IDPR and Benden and Palermo in their official capacity. Judgement is entered in favor of Benden and Palermo, in their individual capacity on Counts 1 and II. Nania and Zweig's motion to dismiss the second amended complaint is granted and Count II is dismissed. Dr. Green's motion to reconsider our ruling, his motion for summary judgement [44-1] and his motion for sanctions 36-1 are denied. This case is terminated.

Michael W. Dobbins, Clerk of the Court

s/ Ttresa S. Abram, Deputy Clerk
Date: 9/28/2000

APPENDIX B2

In the United States District Court
For The Northern District of Illinois
Eastern Division

THEOPHILUS GREEN, ASSOCIATED PSYCHOLOGICAL SERVICES, PSYCHOLOGICAL SOLUTIONS, P.C. AND RELATED CLIENTS AND STAFF	)	
Plaintiffs	)	
vs.	)	No.99C6002
PROFESSIONAL REGULATION, DIRECTOR, WISCONSIN DEPARTMENT OF PROFESSIONAL REGULATION and JOHN ZWEIG, individually,	)	Judge Wayne Anderson
Defendants.	)	January 30, 2001

Order

This matter is currently before the court on the motion of defendant Health Care Service Corporation ("HCSC") and the Court sole complaint pending in this matter is plaintiff's Second Amended Complaint filed on April 26, 2000 as amended by plaintiff's "Motion for Substitution of Defendants."

Having considered and pending Plaintiff's motions for reconsideration and motions to vacate this court's September 28, 2000 Memorandum, Opinion and Order and all parties having appeared before the court on several occasions and having availed themselves of the opportunity to be heard on these matters, it is hereby ordered and adjudged that the findings of fact and determinations of law contained in this court's September 28, 2000 Memorandum, Opinion and Order with regard to the allegations and claims of plaintiff's

Second Amended Complaint as they pertain to HCSC are affirmed and hereby re-entered.

This court finds that there is no just reason for delay and hereby grants the motion by HCSC entitled "Health Care Service Corporations's (HCSC) Rule 54(b) Motion for Entry of a Final Judgement with Respect to Defendant HCSC". HCSC"s counter claim having previously dismissed without prejudice and with this Order, all claims, rights and liabilities asserted and/or brought by and between plaintiff and HCSC are hereby adjudicated. As such, this order terminates and dismisses with prejudice all causes of action brought and/or asserted by plaintiff against HCSC in this matter. The action by and between plaintiff and HCSC is terminated, final and appealable.

It is so ordered.

s/ Wayne R. Andersen.
United States District

Judge

Dated: January 30, 2001

APPENDIX B3

In the United States District Court
For The Northern District of Illinois
Eastern Division

THEOPHILUS GREEN, ASSOCIATED PSYCHOLOGICAL SERVICES, PSYCHOLOGICAL SOLUTIONS, P.C. AND RELATED CLIENTS AND STAFF	)	
Plaintiffs	)	
vs.	)	No.99C6002
PROFESSIONAL REGULATION, DIRECTOR, WISCONSIN DEPARTMENT OF PROFESSIONAL REGULATION and JOHN ZWEIG, individually,	)	Judge Wayne Anderson
Defendants.	)	January 30, 2001

Order

This matter is currently before the court on co-Defendant Health Care Service Corporation ("HCSC") motion for a Rule 54(b) Order and the Court permitting Defendant' Benden, Palermo, Zollar, Sherman and the Illinois Department of Professional Regulation (IDPR) to submit this additional Rule 54(b) order, with the sole complaint pending in this matter being plaintiff's Second Amended Complaint filed on April 26, 2000 as amended by plaintiff's "Motion for Substitution of Defendants." This Court having considered all pending motions by Plaintiff, including those for reconsideration of the denial of injunctive relief and to vacate the order of September, 28, 2000 and after hearings on said motions with all parties being present having the opportunity to be heard on all pending matters, it is hereby ordered and adjudged that the findings of fact and determinations of law

contained in this court's September 28, 2000 Memorandum, Opinion and Order with respect to Defendants IDPR, Benden, Palermo and Sherman, dismissing the Second Amended Complaint and denying Plaintiff's Motion for Reconsideration of the April, 2000 denial of injunctive relief, is affirmed and re-entered. This court thus terminates and dismisses with prejudice all causes of action brought or asserted by Plaintiff against Defendants IDPR, Benden, Palermo and Sherman and also terminates with prejudice all causes of action brought or asserted by Plaintiff against Defendant Zollar, who has been voluntarily dismissed from this action. The actions between plaintiff and Defendants IDPR, Benden, Palermo, Sherman and Zollar is hereby terminated, final and appealable.

It is so ordered.

s/ Wayne R. Andersen.
United States District Judge

Dated: January 30, 2001

Appendix B4

In the United States District Court
For The Northern District of Illinois
Eastern Division

THEOPHILUS GREEN, ASSOCIATED PSYCHOLOGICAL SERVICES, PSYCHOLOGICAL SOLUTIONS, P.C. AND RELATED CLIENTS AND STAFF	)	
Plaintiffs	)	
vs.	)	No.99C6002
	)	
PROFESSIONAL REGULATION, DIRECTOR, WISCONSIN DEPARTMENT OF PROFESSIONAL REGULATION and JOHN ZWEIG, individually,	)	Judge Wayne Anderson
Defendants.	)	June 1, 2001

Order

On September 28, 200, we entered a Memorandum Opinion and Order in this case. In that Opinion, we disposed of Dr. Green's claims against defendants Health Care Service Corporation ("HCSC"), the Illinois Department of Professional Responsibility (sic.) (IDPR), Benden, Palermo and Sherman. Those defendants then requested that this court enter Rule 54B judgments allowing their portion of this case to proceed to appeal. On January 31, 2001, we entered 54(b) judgements as to HCSC, IDPR, Benden, Palermo and Sherman. The Court of Appeals for the Seventh Circuit declined to take jurisdiction over IDPR, Benden, Palermo and Sherman, but is currently considering our judgment as it relates to HCSC.

We have considered Dr. Green's renewed motions to

vacate our original ruling, based on default and alleged evidence of conspiracy. We find nothing in his renewed motions that causes this court to reevaluate our original opinion entered on September 28, 2000. Therefore we deny Dr. Green's outstanding motions to reconsider and for the entry of default for the reasons stated in open court on April 26, 2001 and May 31, 2001. We hereby reaffirm our decision granting the motions to dismiss brought by IDPR and Benden, Palermo and Sherman in their official capacity. We also reaffirm our decision granting judgement in favor of Benden and Palermo in their individual capacity. We note that this court has granted Dr. Green had ample latitude to present evidence because of his pro se status.(sic.)

Dr. Green has informed this Court that he cannot proceed against the remaining Wisconsin defendants until the conclusion of his appeal. Therefore, we grant his request and stay the proceedings against the Wisconsin defendants. A status hearing is scheduled for December 4, 2001. Because Dr. Green has advised this court that he cannot proceed with respect to the Wisconsin defendants until his appeal is concluded, there is no further action that this court can take with respect to this case.

We direct the entry of a Fed. R. Civ. P. 54(b) final judgement as to IDPR, Benden, Palermo and Sherman. This judgement is final and appealable and there is no just reason for delay in the consideration of this appeal. Dr. Green's remaining motions (110-)(111-1)(112-1)(113-1) are denied for the reasons stated in open court. Status hearing schedule for 9.am. On December 4, 2001. All other dates are hereby vacated.

Minute Order Form (06/97) Docketed June 4, 2001.

APPENDIX C

United States Court Of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
March 21, 2002
Before
Hon. Thomas E. Fairchild, Circuit Judge
Hon. Diane P. Wood, Circuit Judge
Hon. Ann Claire Williams, Circuit Judge
Nos. 01-1328, &01-2399

Theophilus Green,
Plaintiff-appellant,

Mary A. Benden, et al.,
Defendants-Appellees.

Appeals from the United States District Court for the Northern District Of Illinois, Eastern Division
No. 99C6002
Wayne R. Andersen, Judge.

AMENDED ORDER

On consideration of the petition for rehearing and rehearing en banc filed by counsel for the Plaintiff-Appellant Theophilus Green on March 4, 2002, all members of the original panel have voted to DENY the petition for rehearing. No judge in regular active service requested a vote on the petition for rehearing en banc.(Judge Kenneth F. Ripple did not participate in the consideration of this matter.)

Accordingly, the petition for rehearing is DENIED.

APPENDIX D

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

THEOPHILUS GREEN,	)	
Plaintiff -appellant,	)	
v.	)	No. 01-00-1118
Illinois Department of Professional	)	
Regulation, etc.,	)	
Defendant-appellee	)	

Order

This matter comes to be heard o the Court's own motion. It appearing to the court that the appellant's brief was due to be filed on November 09, 2000, but same has not been filed;

IT IS HEREBY ORDERED that the instant appeal be and the same is hereby dismissed for want of prosecution.

DATED at Chicago, Illinois, this 17 Day of January, 2001

Order Entered

January 17, 2001

Appellate Court, First District

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s/

---

s/ William Cousins

---

s/ Margaret S. McBride

APPENDIX E

FEDERAL RULES OF CIVIL PROCEDURE

Federal Rules of Civil Procedure, Rules 1, 8(a),(d), 11,12a, 54c, 55a,60b,79a.

Rule 1. SCOPE OF RULES- ONE FORM OF ACTION

1. Scope and Purpose of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 8. General Rules of pleading.

(a) **Claims of Relief.** A pleading which sets forth a claim for relief, whether, an original claim, counter-claim, cross-claim, or third party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds or jurisdiction to support, (2) a short and plain statement of the claim showing that the pleader is entitled to relief and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(d) **Effect of a Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the mount of damage, are admitted when not denied in the responsive pleading.

Rule 11 Signing of pleadings, Motions and other papers,

Representations to Court; Sanctions

(b) **Representations to Court.** By presenting to the court, whether by signing, filing, submitting or later advocations, a pleading, written motion or other papers, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and relief after an inquiry reasonable under the circumstances,--

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discover .....

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b)or are responsible for the violations.

Rule 12. Defensives and objections, When and How presented– by Pleading or Motion

(a) When Presented

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint.

(B)(2)...if a reply is ordered by the court, within 20 days, after service of the order, unless the order otherwise directions.

(H) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the

circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule or included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of court.

Rule 54 (c) Demand for judgement. A judgement by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgement shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

Rule 55 Default

(a) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to affidavit or otherwise, the clerk shall enter the party's default.

(b) **Judgment.** Judgement by default may be entered as follows (2) By the Court. ....the party entitled to a judgement by default shall apply to the court therefor;... If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application.

Rule 60. Relief from judgement or order

(A) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the records and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative, or on the motion of any party and after such notice, if any as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and

thereafter, while the appeal is pending may be so corrected with leave of the appellate court.

(B) Mistakes; Inadvertence, excusable Neglect; Newly Discovered Evidence; Fraud, et. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgement, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;.... the motion shall be made within a reasonable time,....not more than one year after the judgment, order or proceeding was entered or taken.

Rule 79. Books and Records Kept by the Clerk and Entries therein.

(a) Civil Docket. The clerk shall keep a book known as "civil docket".... All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts and judgments shall be entered chronologically in the civil docket on the folio assign to the action and shall be marked with its file number. These entries shall be brief, but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing executive of process. The entry of an order or judgment shall show the date the entry is made.

(b) Civil judgments and Orders. The clerk shall keep in such form and manner as the Director of the Administrative Office of the United States Courts with the approval of the judicial Conference of the United States may prescribe, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the court may direct to be kept.

DOCKET SUMMARY

4/26/00 39 MINUTE ORDER of 4/26/00 by Hon. Wayne R. Andersen : Status hearing held. Plaintiff's motion for leave to file second amended complaint is granted [38-1]. Defendants to

file a response to the second amended complaint by 5/16/00. Plaintiff's oral motion to reconsider ruling on preliminary injunction is taken under advisement. Status hearing set for 6/1/00 at 8:00 a.m. No notice (tw)

[Entry date 04/27/00]

4/26/00 -- SUMMONS issued two originals and two copies as to Kimberly Nania and John Zweig (tw) [Entry date 04/27/00]

5/10/00 40 MEMORANDUM of law by defendants Mary Ann Benden, Michael Palermo and IL Dept of Prof in support of dismissal of plaintiff's second amended complaint [6-1]; Notice (tw) [Entry date 05/12/00] [Edit date 05/12/00]

5/10/00 41 MEMORANDUM by defendant/counter-claimant Hlth Care Svc Corp in support of its motion to dismiss plaintiff's complaint with prejudice [32-1] or in the alternative, summary judgment (Attachments) (tw) [Entry date 05/12/00]

5/10/00 42 MEMORANDUM by defendants Mary Ann Benden, Michael Palermo and IL Dept of Prof in opposition to plaintiff's second amended complaint with memorandum in support of abstention;

Notice (tw) [Entry date 05/12/00]

5/10/00 42 MEMORANDUM by defendants Mary Ann

Benden, Michael Palermo and IL Dept of Prof in support of abstention with

memorandum of law in opposition to plaintiff's second

amended complaint; Notice (tw) [Entry date 05/12/00]

5/10/00 43 MEMORANDUM of law by defendants Mary Ann Benden, Michael Palermo and IL Dept of Prof in opposition to plaintiff's motion for reconsideration with response; Notice (tw)

[Entry date 05/12/00]

5/10/00 43 RESPONSE by defendants Mary Ann Benden, Michael Palermo IL Dept of Prof to plaintiff's motion for reconsideration with memorandum of law in opposition; Notice (tw)

[Entry date 05/12/00]

5/16/00 44 RESPONSE by plaintiffs to defendant's motion to dismiss plaintiff's complaint with prejudice [32-1] or, in the

alternative summary judgment (tw) [Entry date 05/17/00]

5/22/00 45 RESPONSE by plaintiff/counter-defendant Theophilus Green to various defendant memorandums; Notice (tw)

[Entry date 05/23/00]

6/16/00 48 MINUTE ORDER of 6/16/00 by Hon. Wayne R. Andersen : We converting the motion to dismiss brought by the Illinois Department of Professional Regulation, Mary Anne Benden and Michael Palermo into a motion for summary judgment. The

parties have been offered the opportunity to submit supplementary materials. The defendants shall submit their

materials by 6/27/00. Dr. Green has declined to submit materials or respond to the defendants' submissions. Ruling set for 9:00 a.m. on 7/11/00. (See reverse of minute order.) Mailed notice (gk) [Entry date 06/19/00].

[Edit date 06/19/00]

9/28/00 63 MINUTE ORDER of 9/28/00 by Hon. Wayne R. Andersen: HCSC's motion to dismiss [41-1] is granted and Count IV is dismissed. IDPR, Benden and Palermos' motion to dismiss [42-1] is granted and Counts I and II are dismissed against the IDPR and Benden and Palermo in their official capacity.

Judgment is entered in favor of Benden and Palermo, in their individual capacity, on Counts I and II. Nania and Zwieg's motion to dismiss the second amended complaint is granted and Count III is dismissed. Dr Green's motion to reconsider our ruling, his motion for summary judgment [44-1] and his motion for sanctions [36-1] are denied.

Entered Memorandum Opinion and Order. terminating case

Mailed notice (vj) [Entry date 09/29/00]

12/4/00 78 COMPOUND MOTION by plaintiff for HCSC default judgment and supportive arguments in favor of default judgment and legal fees (Attachments); Notice (ip) [Entry date 12/05/00]

12/4/00 79 MINUTE ORDER of 12/4/00 by Hon. Wayne R. Andersen: Health Care Service's oral motion to voluntarily dismiss its counterclaim without prejudice is granted.

12/11/00 82 RESPONSE by defendant Hlth Care Svc Corp in opposition to "plaintiff's compound motion for HCSC default judgment [78-1] and supportive arguments in favor of default judgment and legal fees [78-2]" (ip) [Entry date

12/12/00]

12/13/00 84 MOTION by defendant Hlth Care Svc Corp for entry of a final judgment with respect to defendant HCSC ; Notice (ip)

[Entry date 12/21/00]

12/18/00 83 JUDICIAL NOTICE by plaintiff of related opinion by Illinois State Court [80-1]; Notice (ip) [Entry date 12/19/00]

12/27/00 87 MOTION by plaintiff for default judgment against all defendants excepting Zweig and WDRL ; Notice (ip)

[Entry date 01/10/01]

1/9/01 91 MINUTE ORDER of 1/9/01 by Hon. Wayne R. Andersen: Plaintiff's motions for substitution of defendants Nikki Zollar and Kimberly Nania [88-1], for default judgment against all defendants except Zweig and WDRL [87-1] and for sanctions against Chris Sullivan [89-1] are entered and continued 1/11/01 at 10:30 a.m. No notice (ip)

[Entry date 01/10/01]

1/19/01 99 MOTION by plaintiffs for expeditious selection of special master or in the alternative to reinstate motion for recusal; Notice. (cs) [Entry date 02/06/01]

1/30/01 100 MINUTE ORDER of 1/30/01 by Hon. Wayne R. Andersen: Plaintiff's motion for expeditious selection of special master [99-1] or, in the alternative, to reinstate motion for recusal [99-2] is denied.

1/31/01 97 MINUTE ORDER of 1/31/01 by Hon. Wayne R. Andersen: The Court having considered all pending motions by plaintiff and after hearings on said motions with parties being present having the opportunity to be heard on

all pending matters, it is hereby ordered and adjudged that the findings of fact and conclusions of law contained in this Court's 9/29/00 Memorandum, Opinion and Order, with respect to defendants IDPR, Benden, Palermo and Sherman, dismissing the second amended complaint and denying plaintiff's motion for reconsideration of the April, 2000 denial of injunctive relief, is affirmed and re-entered. The action between plaintiff and defendants IDPR, Benden, Palermo, Sherman and Zollar is hereby terminated, final and appealable. It is so ordered. (Entered Order.) Mailed notice (kf) [Entry date 02/05/01]

1/31/01 98 MINUTE ORDER of 1/31/01 by Hon. Wayne R. Andersen: The Court having considered plaintiff's motions for re-consideration and motions to vacate this court's 9/28/00 Memorandum, Opinion and Order and all parties having appeared before the Court on several occasions and having availed themselves of the opportunity to be heard on these matters, it is hereby ordered and adjudged that the findings of fact and determinations of law contained in this court's 9/28/00 Memorandum, Opinion and Order, with regard to the allegations and claims of plaintiff's second amended complaint as they pertain to HCSC, are affirmed and hereby re-entered. The action by and between plaintiff and HCSC is terminated, final and appealable. (Entered Order.)

6/1/01 117 MINUTE ORDER of 6/1/01 by Hon. Wayne R. Andersen: We direct the entry of a Fed.R.Civ.P.54(b) final judgment as to IDPR, Benden, Palermo and Sherman. This judgment is final and appealable and there is no just reason for delay in the consideration of the this appeal. Dr. Green's remaining motions [110-1][111-][112-1][113-1] are denied for the reasons stated in open court..

Supreme Court, U.S.
FILED

011784 JUN 4 2002

OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

THEOPHILUS GREEN, et al.,

Petitioners,

v.

MARY ANN BENDEN, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

THEOPHILUS GREEN, PSY.D.
225 West Washington Street
Chicago, Illinois 60606
(312) 419-7199

Pro Se

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

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SUPPLEMENTAL APPENDIX

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DISTRICT COURT'S MEMORANDUM, OPINION AND ORDER OF SEPTEMBER 28, 2000.....1

United States District Court, N.D. Illinois, Eastern Division.

Theophilus GREEN, Associated Psychological Services, Psychological Solutions, P.C. and Related Clients and Staff Plaintiffs,
v.
Mary Anne BENDEN, individually, Michael Palermo, individually, Director, Illinois Department of Professional Regulation, Director, Wisconsin Department of Professional Regulation and John Zweig, individually, Health Care Service Corporation, d/b/a Blue Cross Blue Shield, Defendants.

No. 99 C 6002.

Sept. 29, 2000.

MEMORANDUM, OPINION AND ORDER

ANDERSEN, J.

On September 28, 1998, the Director of the Illinois Department of Professional Regulation suspended plaintiff's license to practice clinical psychology. Dr. Green filed this lawsuit to invalidate the suspension. This matter is currently before the court on the motions of Dr. Theophilus Green, plaintiff, and Mary Anne Benden, Michael Palermo, the Illinois Department of Professional Regulation, Health Care Service Corporation, the Wisconsin Department of Professional Regulation, John Zweig and Kimberly Nania, defendants. Dr. Green asks that we reconsider our denial of his motion for injunctive relief and grant him summary judgment. Health Care Service Corporation asks that we dismiss Dr. Green's claims, or, in the alternative, grant summary judgment in its favor. The Illinois Department

of Professional Regulation, Benden, and Palermo ask that we dismiss Dr. Green's claims or abstain in favor of a state court proceeding. Finally, the Wisconsin Department of Professional Regulation, Zweig and Nania ask that we dismiss the complaint.

BACKGROUND

Dr. Green received a degree in clinical psychology from the Illinois School of Professional Psychology on November 7, 1982. Before Dr. Green obtained his license, he practiced clinical psychology in Illinois from 1982 to 1990. Dr. Green's license to practice clinical psychology in Illinois was first issued on February 21, 1990. Dr. Green was a senior partner in Associated Psychological Services from 1982 until 1994.

Dr. Green allegedly supervised the work of Allen Piening from 1983 until 1986. In 1986, Dr. Green signed a VE-Psy form and under penalty of perjury and declared that he supervised Piening's work. Dr. Green used the license number assigned to Associated Psychological Services on the VE-Psy form.

In December of 1995, Piening was involved in a hearing in connection with charges that he was practicing psychology without a degree. Dr. Green was listed as a witness for Piening. Dr. Green alleges that Palermo, an attorney working for the IDPR, stated that, if he appeared as a witness, a complaint would be brought against him and his license would be revoked. Dr. Green proceeded to testify on Piening's behalf.

On October 24, 1996, the IDPR filed a complaint against Dr. Green. That complaint, and subsequent amended complaints before the Administrative Law Judge concern the relationship between Dr. Green and Allen Piening, a Caucasian male who attended the Illinois School of Professional Psychology with Dr. Green. Dr. Green attempted to help Piening become licensed to practice psychology in Illinois by signing a form in which he

attested to have supervised Piening's work. The Administrative Law Judge ("ALJ") found that Dr. Green "did not actually supervise Piening, had no professional association with him between 1983 and 1986 and could not make any ratings, was not himself a licensed Clinical Psychologist in Illinois until 1990, andused an incorrect license number as his own on the verification form." (Administrative Law Judge's Report and Recommendation p. 2). The ALJ also found that Dr. Green assisted Piening in filing erroneous applications in the states of Iowa and Wisconsin.

The ALJ stated that "every explanation [Dr. Green] gave at the hearing for why he believed he could practice for 8 years in Chicago was vague (e.g., somewhere he read he could do what he did in some pamphlet the Department sent, but he could not find it now), or nowhere to be found in statute or rule. These explanations varied throughout the hearing, totaling at least 5. Even the explanation he gave just prior to closing arguments about the supervision he himself received between 1982 and 1989 was confusing and obviously done for evasion--he had no persuasive explanation. Respondent just did what he wanted to do from 1982 to 1990 because he could not pass the test."

The ALJ recommended: (1) an indefinite period of suspension of Dr. Green's license, with a minimum of two years; (2) an indefinite period of supervision, with a minimum period of six years, during which time he should submit written reports to the Committee on his practice and activities in the profession; (3) a reprimand; (4) that Dr. Green be forever barred from supervising any prospective licenses; (5) that Dr. Green should attend psychological counseling and participate in continuing education courses for 24 hours annually on ethics and other subjects approved by the Committee in advance; and (6) Dr. Green must pay a fine of $8,000.00. On December 5, 1997, the Clinical Psychologists Licensing and Disciplinary Committee of the Department of Professional Regulation of the State of

Illinois adopted the ALJ's findings of fact, conclusions of law and recommended sanctions. On September 28, 1998, Nikki Zollar, the Director of the Department of Professional Regulation of the State of Illinois, adopted the findings of fact and conclusions of law and imposed the recommended sanctions. Dr. Green brought an action for administrative review in the Circuit Court of Cook County. The Circuit Court Judge affirmed the suspension and the requirements for reinstating Dr. Green's license, but he vacated the $8,000 fine.

Dr. Green filed his first pro se complaint before this court on September 10, 1999, his amended complaint on November 29, 1999, and his four-count second amended complaint on December 17, 1999. The gravamen of his complaint is that the defendants conspired to suspend his license and withhold payment for services that he rendered because of hostility motivated by racial animus. In Count I of his second amended complaint, Dr. Green alleges that IDPR, Benden and Palermo maliciously prosecuted him and violated his right to due process in violation of 42 U.S.C. § 1985 . In Count II, he alleges that Benden, Palermo and the IDPR conspired to maliciously prosecute him on the basis of race. In Count III, he alleges conspiracy and malicious prosecution relating to the suspension of his license to practice psychology in Wisconsin. Finally, in Count IV, he alleges that HCSC and IDPR conspired to deprive him of the benefit of his agreement with HCSC.

In April of 2000, we held a two-day evidentiary hearing on Dr. Green's request for injunctive relief. At the end of the hearing, we found that there was no evidence that either IDPR or HCSC was motivated by racial bias. The defendants renewed their motions to dismiss. HCSC moves to dismiss, or in the alternative for summary judgment, on the basis of a lack of jurisdiction. IDPR moves for dismissal, or abstention, based on several claimed immunities. The Wisconsin defendants move for dismissal on the grounds that they have been improperly

served. Dr. Green has filed his own motion for summary judgment and a motion for reconsideration of our denial of injunctive relief. Dr. Green has also filed a motion for Rule 11 sanctions against Benden.

On June 16, 2000, we issued an order stating that we would construe the motion to dismiss brought by the IDPR and individual defendants as a motion for summary judgment and invited further submissions of evidence. The defendants submitted the affidavits of Mary Anne Benden and Michael Palermo. Dr. Green initially declined to submit further materials, but on June 29, 2000, he did submit a response to the two affidavits.

DISCUSSION

I. *HCSC's Motion to Dismiss the Complaint*

In Count IV, Dr. Green alleges a conspiracy between IDPR and HCSC. He alleges that HCSC unlawfully shared information about the plaintiff and his clients with IDPR and unlawfully denied him $580,000 in benefits. HCSC argues that Dr. Green has failed to state a claim for civil conspiracy under section 1985(3). We agree.

A motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) does not test whether the plaintiff will prevail on the merits, but instead whether the plaintiff has properly stated a claim. *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). In deciding a motion to dismiss, the court must assume all facts in the complaint to be true, construe the allegations liberally, and view the allegations in a light most favorable to the plaintiff. *Caremark, Inc. v. Coram Healthcare Corp.,* 113 F.3d 645, 648 (7th Cir.1997) . The court may dismiss a complaint for failure to state a claim under Rule 12(b)(6) only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984).

To establish a prima facie case of civil conspiracy under section 1985, a plaintiff must show an express or implied agreement among the defendants to deprive the plaintiff of his constitutional rights, and a deprivation of those rights in the form of overt acts in furtherance of the agreement. *Scherer v. Balkema*,840 F.2d 437, 441 (7th Cir.), *cert. denied*, 486 U.S. 1043 (1988). A section 1985 plaintiff must plead more than conclusory allegations of a conspiracy. He must plead specific material facts that show the existence of a conspiracy. *Winterland Concessions Co. v. Trela*, 735 F.2d 257, 262 (7th Cir.1984).

Dr. Green has failed to state a conspiracy claim against HCSC. He has not pled any specific material facts which show that HCSC actions were motivated by racial animus. The only evidence that he proffers to support his contention that HCSC actions were the result of bias are his own conclusory statements. Furthermore, Dr. Green has moved for summary judgment, suggesting that he has proffered all of the evidence necessary to support his contentions. This court granted Dr. Green an evidentiary hearing and repeatedly allowed him to submit new evidentiary materials, but he has been unable to present any evidence to support his claim against HCSC. The only evidence submitted to this court indicates that HCSC failed to honor Dr. Green's bills because he no longer possessed a license, not because of racial animus and not because of any conspiracy with the state regulators. HCSC's motion to dismiss Count IV of the Second Amended Complaint is granted.

II. *Motion to Dismiss the Complaint Brought by IDPR, Benden and Palermo*

In Counts I and II, Dr. Green alleges that Benden, Palermo and IDPR conspired to prosecute him and denied him his license in violation of the Due Process guarantees of the U.S. Constitution.

Dr. Green provides alternative explanations for his prosecution. He alleges that the prosecution was motivated by racial animus, but he also alleges that he was prosecuted in retaliation for his testimony in the Piening matter. These defendants argue that the complaint should be dismissed based on sovereign immunity, prosecutorial immunity, qualified immunity, res judicata, the applicable statute of limitations, and a failure to state a claim upon which relief may be granted.

A. *The Sovereign Immunity of the IDPR, Benden and Palermo*

IDPR, Benden and Palermo argue that they are shielded from this lawsuit by the doctrine of sovereign immunity. The Eleventh Amendment renders a State immune from any suit brought by an individual in federal court unless the State has consented to being sued in that forum. *Kimel v. Florida Bd. of Regents,* 528 U.S. 62, 120 S.Ct. 631, 640, 145 L.Ed.2d 522 (2000). Congress may abrogate the State's Eleventh Amendment immunity and provide for federal jurisdiction if it is acting pursuant to its enforcement power under Section 5 of the Fourteenth Amendment. *Id.* In the instant case, IDPR, Benden and Palermo have not waived their immunity. Therefore, they can only be sued if Congress clearly expressed an intent to abrogate the Eleventh Amendment immunity. *Atascadero State Hospital v. Scanlon,* 473 U.S. 234, 243 (1983).

IDPR is clearly not a proper defendant because a state agency is not a "person" for the purposes of Section 1983. *Will v. Michigan Dept. of State Police,*491 U.S. 58, 64 (1989); *Ryan v. Illinois Department of Children and Family Services,* 185 F.3d 751, 758 (7th Cir.1999). Therefore, Section 1983 does not trump IDPR's immunity. Dr. Green could have named the current Director in an action for injunctive relief under the doctrine of *Ex Parte Young,*209 U.S. 123 (1908), but we have already denied Dr. Green's request for injunctive relief. Therefore, IDPR is dismissed from this lawsuit.

Mary Anne Benden was the attorney for the IDPR who investigated Dr. Green and prosecuted him before the Administrative Law Judge. Michael Palermo was an attorney for the IDPR who prosecuted the case against Allen Piening. Both Benden and Palermo are improper defendants when being sued for actions taken in their official capacity. "The Eleventh Amendment bars a suit against state officials when 'the state is the real, substantial party in interest ." ' *Pennhurst State School & Hospital et al. v. Halderman,* 465 U .S. 89, 101(1984) (Citing *Ford Motor Co. v. Department of Treasure,* 323 U.S. 459, 464 (1945)). The evidence, the affidavits submitted by the defendants and the testimony we considered at the evidentiary hearing, proves that Benden was clearly acting within the scope of her authority when she instituted the action against Dr. Green. Furthermore, the evidence also proves that Palermo was acting within the scope of his authority when he prosecuted Piening. Therefore, their actions are shielded from suit by the Eleventh Amendment. Because Dr. Green has been unable to provide any evidence that Benden or Palermo acted outside their authority, Counts I and II are dismissed against the individual defendants in their official capacities.

B. *Benden and Palermo, in Their Individual Capacities*

Judgment will be entered in favor of Benden and Palermo in their individual capacities. We engage in this analysis because Dr. Green also alleges a violation of his constitutional rights by Benden and Palermo in their individual capacities. We converted the individual defendants' motion to dismiss into a motion for summary judgment in order to determine whether any evidence supported Dr. Green's allegations of racial bias. After an extensive review of Green's submissions and the evidence submitted during the hearing, we find that he produced no evidence to support his allegation that Benden or Palermo were motivated by racial bias. Therefore, Dr. Green's

claims based on a racial animus in violation of 42 U.S.C. § § 198 and 1985 cannot be sustained and judgment will be entered.

C. *Failure to State a Malicious Prosecution Claim Against the IDPR, Benden and Palermo*

Dr. Green's allegation of malicious prosecution fails to state a claim upon which relief may be granted. To state a claim for malicious prosecution under Section 1983, a plaintiff must demonstrate that: "(1) he has satisfied the requirements of a state law cause of action for malicious prosecution; (2) the malicious prosecution was committed by state actors; and (3) he was deprived of liberty." *Reed v. City of Chicago,* 77 F.3d 1049, 1051 (7th Cir.1996). To state a claim for malicious prosecution under Illinois law, a plaintiff must allege that: "(1) he was subjected to judicial proceedings; (2) for which there was no probable cause; (3) the defendants instituted or continued the proceedings maliciously; (4) the proceedings were terminated in the plaintiff's favor; and (5) there was an injury." *Id.* Dr. Green can not show that the proceedings were terminated in his favor. After administrative review by the Circuit Court of Cook Count, the suspension of his license was affirmed. Dr. Green has not prosecuted an appeal of the Circuit Court decision. Although the sanction imposed by the Director was severe, this court is reluctant to second guess the Director's decision, especially when the decision has been reviewed and upheld by the Circuit Court of Cook County.

Furthermore, Dr. Green must "allege some action that supports the conclusion that a malicious prosecution occurred." *Sneed v. Rybicki,* 146 F.3d 478, 481 (7th Cir.1998). His allegations here amount to the fact that he believes he was prosecuted because he testified on Piening's behalf. Dr. Green does not dispute the fact that he signed the VE-Psy form, but argues that his behavior did not merit prosecution. It is reasonable that the

IDPR would want to safeguard the process for the admission of new members to the practice of psychology. Because Dr. Green has not alleged the elements necessary to show malicious prosecution, the motion of IDPR, Benden and Palermo is granted, and the portions Counts I and II which allege malicious prosecution are dismissed. Since we have dismissed or entered judgment on the entirety of the claims in Counts I and II, we will not consider defendants' arguments based on res judicata, prosecutorial immunity, or the statute of limitations.

III. *The Wisconsin Defendants' Motion to Dismiss the Complaint*

Kimberly Nania and John Zweig have filed a Fed.R.Civ.P. 12(b)(5) motion to dismiss on the ground that service of process was insufficient. Although they have not raised the sovereign immunity issue, the doctrine also prohibits suit brought in federal court by a citizen of one state against another state. *Employees v. Missouri Public Heath & Welfare Dep't,* 411 U.S. 279, 280 (1973). Therefore, even if Dr. Green were to perfect service, Nania and Zweig would be shielded from suit by virtue of their sovereign immunity.

In the instant motion, however, these defendants contend that service was improper because the envelopes they received failed to contain the necessary items to request a waiver of service and neither individual was personally served.

Under the Federal Rules of Civil Procedure, a defendant may be served "(1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or (2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by

delivering a copy of the summons and of the compliant to an agent authorized by appointment or by law to receive service of process." Fed.R.Civ.P. 4(e).

Wisconsin allows service by personally serving the summons upon the defendant, or leaving a copy of the summons at the defendant's usual place of abode either in the presence of some competent member of the family at least 14 years of age or in the presence of a competent adult currently residing in the abode of the defendant, and informing the recipient of the content of the summons. Wisconsin Stat. § 801.11 (1997-98).

Illinois allows service of summons by personal service, abode service with family or a person residing there over 13 years of age provided another copy is sent to the defendant at his or her usual place of abode.

Dr. Green has failed to properly serve these two defendants. In order to request a waiver of service, the plaintiff "shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing." Fed.R.Civ.P. 4(d)(2)(G). The affidavits provided by Nania and Zweig state that the envelopes they received failed to contain copies of a notice of the commencement of the action, copies of a request that the defendant waive service, and a prepaid means of compliance. Therefore, Dr. Green has failed to request a valid waiver of service.

Dr. Green failed to comply with any of the applicable service of process statutes. He failed to obtain personal service of a copy of the summons to either Nania or Zweig. Furthermore, Dr. Green did not leave a copy of the summons in the usual place of abode of either Nania or Zweig. Thus, the service of process of Nania and Zweig is insufficient and they are dismissed from this lawsuit.

IV. *Dr. Green's Motion to Reconsider Injunctive Relief*

Dr. Green has asked that we reconsider our April 12, 2000 decision to deny his request for injunctive relief. Dr. Green alleged that he had not received the Response Memorandum of Heath Care Service Corporation in Opposition to Plaintiff's Motion for a Preliminary Injunction on a timely basis. The importance of this allegation, according to Dr. Green, is that one of the exhibits included in HCSC's Response Memorandum proves that HCSC conspired with the IDPR.

Dr. Green alleges that exhibit C of HCSC's Response Memorandum, a letter supposedly sent by Dr. Green, proves a conspiracy between HCSC and IDPR. Exhibit C of that brief is a letter dated November 19, 1993 that Dr. Green allegedly sent to complain about the allegedly improper behavior of an Administrative Law Judge. Nowhere in the record does Dr. Green reveal to whom this letter was addressed or whether it was sent. In the letter, Dr. Green alleged that, after providing psychological counseling services to the ALJ's wife and children, he was able to determine that the ALJ physically abused his family. Dr. Green reported this alleged abuse to the Illinois Department of Children and Family Services. Dr. Green alleges that, after he reported the ALJ, the ALJ retaliated against him by reporting his fees to HCSC as fraudulent.

Dr. Green argues that the only way HCSC could have obtained a copy of the letter is from IDPR. Since HCSC possessed a copy of the letter, Dr. Green theorizes that HCSC must have conspired with IDPR. Dr. Green asks that we reconsider our denial of injunctive relief because he argues that, if he had possessed the exhibit before the hearing, he and we would have made the connection. Therefore, he argues that he would have been able to prove his allegations.

We deny Dr. Green's motion. First, HCSC's possession of the

letter does not change the basis of our original conclusion that Dr. Green presented no evidence which showed that HCSC was motivated by racial animus. Second, the letter was sent to HCSC by Dr. Green. HCSC included in their response to this motion Dr. Green's cover letter accompanying a copy of exhibit C. Therefore, the fact that HCSC possessed a copy is not evidence of conspiracy.

V. *Dr. Green's Motion for Summary Judgment*

Because, as noted above, Dr. Green has presented no evidence of conspiracy or racial animus, his motion for summary judgment is denied.

VI. *Dr. Green's Motion for Sanctions*

Dr. Green has made a motion for a hearing to consider if Benden should be held in contempt for perjury, falsification of documents, violations of Rule 11, making false statements to the Attorney Registration and Disciplinary Commission, and fraudulent misrepresentations to this court. The basis of his complaint is that her testimony before this court was false, that she shared the letter marked exhibit C with HCSC, and that she wrote false and misleading letter to the ARDC. Dr. Green also complains that, despite all of the latitude granted to him by this court, his requests for witnesses and discovery were improperly denied.

We found Mary Anne Benden to be a credible witness. Because Dr. Green has failed to provide any evidence supporting his charges and because we fully credit Benden's testimony, we deny his motion in all respects.

CONCLUSION

HCSC's motion to dismiss the second amended complaint [41]

is granted and Count IV is dismissed. IDPR, Benden and Palermo's motion to dismiss the second amended complaint [42] is granted and Counts I and II are dismissed against the IDPR and Benden and Palermo in their official capacity. Judgment is entered in favor of Benden and Palermo, in their individual capacity, on Counts I and II. Nania and Zweig's motion to dismiss the second amended complaint is granted and Count III is dismissed. Dr. Green's motion to reconsider our ruling, his motion for summary judgment [44] and his motion for sanctions [36] are denied. This case is terminated.

It is so ordered.